

HOUSE BILL NO. 4135

February 04, 2021, Introduced by Reps. Bollin, Hertel, Kuppa, Lightner, Steenland, Bezotte, Paquette, Wendzel and Hope and referred to the Committee on Elections and Ethics.

A bill to amend 1954 PA 116, entitled
"Michigan election law,"
by amending section 765a (MCL 168.765a), as amended by 2020 PA 177.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 765a. (1) Subject to section 764d, if a city or township
2 has only 1 election precinct and that city or township decides to
3 use an absent voter counting board, the board of election
4 commissioners of that city or township shall establish the absent
5 voter counting board for the election day precinct in that city or

1 township. Except as otherwise provided in this subsection and
2 subject to section 764d, if a city or township has only 2 election
3 precincts, the board of election commissioners of that city or
4 township shall establish an absent voter counting board for both
5 election day precincts in that city or township. Subject to section
6 764d, if a city or township has only 2 election precincts, that
7 city or township is not required to establish an absent voter
8 counting board for both election day precincts in that city or
9 township if the city or township has fewer than 6,000 registered
10 electors. Subject to section 764d, if a city or township ~~decides to~~
11 ~~use absent voter counting boards,~~ **has 3 or more election precincts,**
12 the board of election commissioners of that city or township shall
13 establish an absent voter counting board for each election day
14 precinct in that city or township. **If the clerk of a city or**
15 **township enters into an agreement under section 764d, that**
16 **satisfies the requirement for the city or township to establish an**
17 **absent voter counting board under this subsection.** The ballot form
18 of an absent voter counting board must correspond to the ballot
19 form of the election day precinct for which it is established.
20 After the polls close on election day, the county, city, or
21 township clerk responsible for producing the accumulation report of
22 the election results submitted by the boards of precinct election
23 inspectors shall format the accumulation report to clearly indicate
24 all of the following:

- 25 (a) The election day precinct returns.
- 26 (b) The corresponding absent voter counting board returns.
- 27 (c) A total of each election day precinct return and each
28 corresponding absent voter counting board return.
- 29 (2) Subject to section 764d, the board of election

1 commissioners shall establish the absent voter counting boards.
2 Subject to section 764d, the board of election commissioners shall
3 appoint the election inspectors to those absent voter counting
4 boards not less than 21 days or more than 40 days before the
5 election at which they are to be used. Sections 673a and 674 apply
6 to the appointment of election inspectors to absent voter counting
7 boards under this section. The board of election commissioners
8 shall determine the number of ballots that may be expeditiously
9 counted by an absent voter counting board in a reasonable period of
10 time, taking into consideration the size and complexity of the
11 ballot to be counted pursuant to the guidelines of the secretary of
12 state. Combined ballots must be regarded as the number of ballots
13 as there are sections to the ballot.

14 (3) If more than 1 absent voter counting board is to be used,
15 the city or township clerk shall determine the number of electronic
16 voting systems or the number of ballot boxes and the number of
17 election inspectors to be used in each of the absent voter counting
18 boards and to which absent voter counting board the absent voter
19 ballots for each precinct are assigned for counting.

20 (4) In a city or township that uses absent voter counting
21 boards under this section, absent voter ballots must be counted in
22 the manner provided in this section and, except as otherwise
23 provided in section 764d, absent voter ballots must not be
24 delivered to the polling places. Subject to section 764d, the board
25 of election commissioners shall provide a place for each absent
26 voter counting board to count the absent voter ballots. Section 662
27 applies to the designation and prescribing of the absent voter
28 counting place or places in which the absent voter counting board
29 performs its duties under this section, except the location may be

1 in a different jurisdiction if the county provides a tabulator for
2 use at a central absent voter counting board location in that
3 county. The places must be designated as absent voter counting
4 places. Except as otherwise provided in this section, laws relating
5 to paper ballot precincts, including laws relating to the
6 appointment of election inspectors, apply to absent voter counting
7 places. The provisions of this section relating to placing of
8 absent voter ballots on electronic voting systems apply. More than
9 1 absent voter counting board may be located in 1 building.

10 (5) The clerk of a city or township that uses absent voter
11 counting boards shall supply each absent voter counting board with
12 supplies necessary to carry out its duties under this act. The
13 supplies must be furnished to the city or township clerk in the
14 same manner and by the same persons or agencies as for other
15 precincts.

16 (6) Subject to section 764d, absent voter ballots received by
17 the clerk before election day must be delivered to the absent voter
18 counting board by the clerk or the clerk's authorized assistant at
19 the time the election inspectors of the absent voter counting
20 boards report for duty, which time must be established by the board
21 of election commissioners. Except as otherwise provided in section
22 764d, absent voter ballots received by the clerk before the time
23 set for the closing of the polls on election day must be delivered
24 to the absent voter counting boards. Except as otherwise provided
25 in section 765(6), absent voter ballots must be delivered to the
26 absent voter counting boards or combined absent voter counting
27 boards in the sealed absent voter ballot return envelopes in which
28 they were returned to the clerk. Written or stamped on each of the
29 return envelopes must be the time and the date that the envelope

1 was received by the clerk and a statement by the clerk that the
2 signatures of the absent voters on the envelopes have been checked
3 and found to agree with the signatures of the voters on the
4 registration cards or the digitized signatures of voters contained
5 in the qualified voter file as provided under section 766. If it is
6 determined after 8 p.m. on the day before election day that a
7 signature on the registration card or a digitized signature
8 contained in the qualified voter file and on the absent voter
9 ballot return envelope does not agree as provided under section
10 766, if it is determined after 8 p.m. on the day before election
11 day that the absent voter failed to sign the envelope, or if the
12 statement of the absent voter is not properly executed, the clerk
13 shall mark the envelope "rejected" and the reason for the rejection
14 and shall place his or her name under the notation. An envelope
15 marked "rejected" must not be delivered to the absent voter
16 counting board or combined absent voter counting board but must be
17 preserved by the clerk until other ballots are destroyed in the
18 manner provided in this act. If before 8 p.m. on the day before
19 election day the clerk of a city or township rejects an absent
20 voter ballot return envelope because the signature on the absent
21 voter ballot return envelope does not agree sufficiently with the
22 signature on the master card or the digitized signature contained
23 in the qualified voter file so as to identify the elector or
24 because the elector failed to sign the absent voter ballot return
25 envelope, the city or township clerk shall as soon as practicable,
26 but in no event later than 48 hours after determining the
27 signatures do not agree sufficiently or that the signature is
28 missing, or by 8 p.m. on the day before election day, whichever
29 occurs first, notify the elector of the rejection by mail,

1 telephone, or electronic mail. The clerk shall also comply with
2 section 765(5).

3 (7) This chapter does not prohibit an absent voter from voting
4 in person within the voter's precinct at an election,
5 notwithstanding that the voter may have applied for an absent voter
6 ballot and the ballot may have been mailed or otherwise delivered
7 to the voter. The voter, the election inspectors, and other
8 election officials shall proceed in the manner prescribed in
9 section 769. The clerk shall preserve the canceled ballots for 2
10 years.

11 (8) The absent voter counting boards and combined absent voter
12 counting boards shall process the ballots and returns in as nearly
13 as possible the same manner as ballots are processed in paper
14 ballot precincts. The poll book may be combined with the absent
15 voter list or record required by section 760, and the applications
16 for absent voter ballots may be used as the poll list. The
17 processing and tallying of absent voter ballots ~~may~~**must not**
18 commence ~~at earlier than~~ 7 a.m. on the day of the election.

19 (9) An election inspector, challenger, or any other person in
20 attendance at an absent voter counting place or combined absent
21 voter counting place at any time after the processing of ballots
22 has begun shall take and sign the following oath that may be
23 administered by the chairperson or a member of the absent voter
24 counting board or combined absent voter counting board:

25 "I (name of person taking oath) do solemnly swear (or affirm)
26 that I shall not communicate in any way any information relative to
27 the processing or tallying of votes that may come to me while in
28 this counting place until after the polls are closed."

29 (10) The oaths administered under subsection (9) must be

placed in an envelope provided for the purpose and sealed with the red state seal. Following the election, the oaths must be delivered to the city or township clerk. Except as otherwise provided in subsection (12), a person in attendance at the absent voter counting place or combined absent voter counting place shall not leave the counting place after the tallying has begun until the polls close. Subject to this subsection, the clerk of a city or township may allow the election inspectors appointed to an absent voter counting board in that city or township to work in shifts. A second or subsequent shift of election inspectors appointed for an absent voter counting board may begin that shift at any time on election day as provided by the city or township clerk. However, an election inspector shall not leave the absent voter counting place after the tallying has begun until the polls close. If the election inspectors appointed to an absent voter counting board are authorized to work in shifts, at no time shall there be a gap between shifts and the election inspectors must never leave the absent voter ballots unattended. At all times, at least 1 election inspector from each major political party must be present at the absent voter counting place and the policies and procedures adopted by the secretary of state regarding the counting of absent voter ballots must be followed. A person who causes the polls to be closed or who discloses an election result or in any manner characterizes how any ballot being counted has been voted in a voting precinct before the time the polls can be legally closed on election day is guilty of a felony.

(11) Voted absent voter ballots must be placed in an approved ballot container, and the ballot container must be sealed in the manner provided by this act for paper ballot precincts. The seal

1 numbers must be recorded on the statement sheet and in the poll
2 book.

3 (12) Subject to this subsection, a local election official who
4 has established an absent voter counting board or combined absent
5 voter counting board, the deputy or employee of that local election
6 official, an employee of the state bureau of elections, a county
7 clerk, an employee of a county clerk, or a representative of a
8 voting equipment company may enter and leave an absent voter
9 counting board or combined absent voter counting board after the
10 tally has begun but before the polls close. A person described in
11 this subsection may enter an absent voter counting board or
12 combined absent voter counting board only for the purpose of
13 responding to an inquiry from an election inspector or a challenger
14 or providing instructions on the operation of the counting board.
15 Before entering an absent voter counting board or combined absent
16 voter counting board, a person described in this subsection must
17 take and sign the oath prescribed in subsection (9). The
18 chairperson of the absent voter counting board or combined absent
19 voter counting board shall record in the poll book the name of a
20 person described in this subsection who enters the absent voter
21 counting board or combined absent voter counting board. A person
22 described in this subsection who enters an absent voter counting
23 board or combined absent voter counting board and who discloses an
24 election result or in any manner characterizes how any ballot being
25 counted has been voted in a precinct before the time the polls can
26 be legally closed on election day is guilty of a felony. As used in
27 this subsection, "local election official" means a county, city, or
28 township clerk.

29 (13) The secretary of state shall develop instructions

1 consistent with this act for the conduct of absent voter counting
2 boards or combined absent voter counting boards. The secretary of
3 state shall distribute the instructions developed under this
4 subsection to county, city, and township clerks 40 days or more
5 before a general election in which absent voter counting boards or
6 combined absent voter counting boards will be used. A county, city,
7 or township clerk shall make the instructions developed under this
8 subsection available to the public and shall distribute the
9 instructions to each challenger in attendance at an absent voter
10 counting board or combined absent voter counting board. The
11 instructions developed under this subsection are binding upon the
12 operation of an absent voter counting board or combined absent
13 voter counting board used in an election conducted by a county,
14 city, or township.